

1 **WAGANAKISING ODAWAK STATUTE #**
2 **VULNERABLE ELDER AND ADULT PROTECTION STATUTE**
3
4

5 **SECTION I. PURPOSE**
6

7 The purpose of this Statute is to protect Vulnerable Elders and Adults from abuse, neglect, or
8 exploitation as defined by this Statute. This Statute repeals and replaces any previous Adult
9 Welfare Code, including WOS 2005-07.
10
11

12 **SECTION II. DEFINITIONS**
13

14 **A.** "Abuse" means
15

16 **1.** An intentional or negligent infliction of bodily injury, unreasonable confinement,
17 intimidation, emotional abuse or cruel punishment of a Vulnerable Elder or Adult which
18 results in physical pain or mental anguish; or
19

20 **2.** Sexual abuse is physical contact without consent of a Vulnerable Elder or Adult
21 with the intent to derive sexual gratification by the person making contact. Consent may
22 not be obtained by threat, coercion, intimidation or fraud.
23

24 **B.** "Caretaker" means a person who is required by court of competent jurisdiction to provide
25 services or resources to a Vulnerable Elder or Adult.
26

27 **C.** "Department" means the Little Traverse Bay Bands of Odawa Indians Department of
28 Human Services.
29

30 **D.** "Emergency" means a situation in which a Vulnerable Elder or Adult is immediately at
31 risk of death or injury and is unable to consent to services to remove the risk.
32

33 **E.** "Exploitation" means the improper or unauthorized use of a Vulnerable Elder or Adult's
34 funds, property or other resources or failure to use a Vulnerable Elder or Adult's funds, property
35 or resources as a Vulnerable Elder or Adult desires or for their benefit.

1
2 **F.** “Family” means any spouse, parent, child, stepparent, stepchild, grandparent,
3 grandchild, or significant other person or relative with whom a Vulnerable Elder or Adult has a
4 familial relationship, or who resides with a Vulnerable Elder or Adult.
5

6 **G.** “Guardian” means a person assigned by a court of competent jurisdiction to exercise the
7 duty and authority to provide care and control of a person under the Tribal Court’s jurisdiction.
8

9 **H.** “Good Faith” means an honest and reasonable belief or purpose, and the lack of intent to
10 defraud.
11

12 **I.** “Least restrictive alternative” means whenever it is necessary to protect a Vulnerable
13 Elder or Adult, the least restrictive method of intervention shall be used to protect the freedom
14 and independence of a Vulnerable Elder or Adult; the least restrictive alternative is that
15 environment which is the most like a Vulnerable Elder or Adult home setting and which is most
16 capable of supporting the protected person's physical and mental health; and emotional well-
17 being.
18

19 **J.** “LTBB” or “Tribe” or “Tribal” means the Little Traverse Bay Bands of Odawa Indians.
20

21 **K.** “Neglect” means the failure of someone with fiduciary or legal responsibility to provide
22 necessary services or resources to maintain the health or safety of a Vulnerable Elder or Adult or
23 self-neglect caused by the inability of the adult to provide themselves with basic food, clothing,
24 shelter and medical care due to mental incompetency or physical disability.
25

26 **L.** “Party” or “interested party” means a Vulnerable Elder or Adult, family, caretaker, and
27 any other person that has an interest in the welfare of a Vulnerable Elder or Adult. The Court
28 shall have the power to determine who is or is not a party or interested party in any court
29 proceeding.
30

31 **M.** “Prosecutor” means the Little Traverse Bay Bands of Odawa Indians Prosecutor.
32

33 **N.** “Protective placement” means the placement of a Vulnerable Elder or Adult in a hospital,
34 nursing home, residential care facility, other suitable placement, or transfer from one facility to
35 another with consent of that person or with appropriate legal authority.

1
2 **O.** "Protective services" means services provided to a Vulnerable Elder or Adult with
3 consent or by order of appropriate legal authority which includes but is not limited to: social
4 services, mental and physical health examinations, home and day care, legal assistance,
5 guardianship, case management and any other services consistent with this Statute.
6

7 **P.** "Retaliation" means intimidating, threatening to cause bodily harm, or causing bodily
8 harm, or causing bodily harm to a reporter or family of a person reporting abuse; causing the
9 reporter or reporter's family to be terminated, suspended or reprimanded by an employer; causing
10 property damage to real or personal property belonging to a reporter's family.
11

12 **Q.** "Substantiated Report" means when there is probable cause of abuse after an
13 investigation conducted by the Department. The report is sent to the Tribal Prosecutor for further
14 steps to be taken.
15

16 **R.** "Tribe" or "Tribal" means the Little Traverse Bay Bands of Odawa Indians.
17

18 **S.** "Tribal Court" means the Little Traverse Bay Bands of Odawa Indians Tribal Court.
19

20 **T.** "Vulnerable Elder or Adult" means an Elder who is fifty-five (55) years old or older or an
21 adult who is eighteen (18) years old or older and is unable to protect themselves from abuse,
22 neglect or exploitation due to mental incompetency or physical disability.
23

24 **U.** "Unsubstantiated Report" means when no probable cause exists after an investigation.
25 These reports are filed within the Department for reference as needed.
26
27

28 **SECTION III. AUTHORITY** 29

30 **A.** Pursuant to provisions of the Tribal Constitution, including Article I, B, 2. *"Promote with*
31 *special care the health, educational and economic interests of all the people, especially our*
32 *children and Elders, and shall protect them from social injustice and all forms of exploitation;*
33 *and 4. "Establish and maintain within the limits of their economic capacity and development,*
34 *effect provision for securing the right to work, to education and assistance, in cases of*
35 *unemployment, old age, sickness and disablement, and in other cases of need".*

1
2 **B.** Pursuant to provisions of the Tribal Constitution, including Article VI., C. "... the
3 Executive Branch to administer such funds, enforce this Constitution and laws passed
4 thereunder, and implement policies and procedures enacted by the Tribal Council in accordance
5 with Article VIII", Article VII of the Tribal Constitution allows the Legislative Branch to
6 approve the creation or dissolution of Executive divisions or departments to promote and protect
7 the peace, health, safety, education and general welfare of Little Traverse Bay Bands of Odawa
8 Indians and its members.
9

10 11 **SECTION IV. JURISDICTION** 12

13 **A.** The Little Traverse Bay Bands of Odawa Indians shall have jurisdiction over the
14 following:
15

16 **1.** A Tribal Vulnerable Elder or Adult, who are unable to protect themselves from
17 suspected abuse, neglect or exploitation due to mental incompetency or physical
18 disability and is an enrolled Citizen of Little Traverse Bay Bands of Odawa Indians who
19 resides within the exterior boundaries of the Reservation or residing within Tribal Trust
20 Lands;
21

22 **2.** Vulnerable Elder or Adult, who are unable to protect themselves from suspected
23 abuse, neglect or exploitation due to mental incompetency or physical disability who
24 resides within Tribal Trust Lands;
25

26 **3.** A person who is either required by a court of competent jurisdiction or has a
27 fiduciary or legal responsibility to provide services or resources to an Vulnerable Elder or
28 Adult and is suspected of abuse, neglect or exploitation under this statute within the
29 exterior boundaries of the Reservation or residing within Tribal Trust Lands;
30
31

32 **SECTION V. DUTY TO REPORT** 33

34 **A.** It is the duty of any person who have reason to suspect that a Vulnerable Elder or Adult is
35 abused or neglected shall contact the Department.

1
2
3 **B.** It is mandated by this Statute for the following to report to the Department any suspected
4 abuse, neglect or exploitation of a Vulnerable Elder or Adult, immediately or as soon after that is
5 reasonably possible:
6

7 1. Judiciary employees, or persons who either have been court appointed or have a
8 legal responsibility to a Vulnerable Elder or Adult;
9

10 2. Law Enforcement, Prosecutor and staff;
11

12 3. Tribal employee who provide services to Vulnerable Elder or Adult of the
13 following departments:
14

15 a. Education

16 b. Elders

17 c. Health

18 d. Housing

19 e. Human Services

20 f. Language
21

22 4. Elected or appointed official of the Tribe;
23

24 **C.** Reports of suspected Vulnerable Elder or Adult abuse are presumed to be made in good
25 faith.
26
27

28 **SECTION VI. IMMUNITY FOR REPORTING** 29

30 A person who in good faith reports suspected abuse, neglect or exploitation as defined in this
31 Statute is immune from any civil or criminal statute, even if the report is unsubstantiated.
32
33

34 **SECTION VII. FAILURE TO REPORT; CIVIL PENALTY** 35

1 If found responsible, after a fair hearing of the court, a person mandated to report who fails to
2 report suspected Vulnerable Elder or Adult abuse, neglect, or exploitation as required by this
3 Statute may be subject to a civil fine not to exceed five-thousand (\$5,000.00) dollars.
4
5

6 **SECTION VIII. FALSE REPORT**

7

8 If found responsible, after a fair hearing of the court, any person who makes a report of
9 suspected Vulnerable Elder or Adult abuse, neglect or exploitation as defined by this Statute
10 knowing it to be false may be subject to a civil fine not to exceed five-thousand (\$5,000.00)
11 dollars.
12
13

14 **SECTION IX. HUMAN SERVICES DEPARTMENT DUTIES,** 15 **RESPONSIBILITIES and AUTHORITY**

16

17 **A.** The Department shall be responsible to initiate an investigation, upon receiving a report
18 of a Vulnerable Elder or Adult abuse, neglect or exploitation.
19

20 **B.** The Department shall investigate all reports. The Department shall investigate upon
21 receipt of the report of abuse, neglect or exploitation within twenty-four (24) hours, meet face to
22 face with the alleged victim within seventy-two (72) hours and complete the investigation with a
23 written report within thirty (30) consecutive days based upon:
24

- 25 1. Personal interviews with the alleged Vulnerable Elder or Adult abused, neglected
26 or exploited, the immediate family and caretaker, suspected abuser, employees of
27 agencies (if involved), and any other person who may have pertinent information;
28
- 29 2. Medical records and other evidence of abuse;
30
- 31 3. Assessments of a Vulnerable Elder or Adult's living conditions;
32
- 33 4. Any other observations, assessments or documents that may aid in completing an
34 accurate report.
35

1 C. Based on the investigation, if the Department believes that there is evidence of
2 Vulnerable Elder or Adult abuse, neglect or exploitation, the Department will submit the report
3 to the Prosecutor.
4

5 D. The Department shall have the authority to obtain from all tribal governmental
6 departments, agencies and programs information and assistance with the Department's
7 investigations of suspected Vulnerable Elder or Adult abuse, neglect or exploitation. This shall
8 include information sharing without the need of signed releases.
9
10

11 **SECTION X. LAW ENFORCEMENT DUTIES AND RESPONSIBILITIES** 12

13 A. Upon the request of the Department, Law Enforcement shall assist the Department in
14 conducting an investigation within twenty-four (24) hours, if one or more of the following
15 conditions exist:
16

- 17 1. Abuse or neglect is the suspected cause of death of a Vulnerable Elder or Adult;
18
- 19 2. A Vulnerable Elder or Adult is the victim of suspected sexual abuse or sexual
20 exploitation;
21
- 22 3. Abuse or neglect resulting in severe physical injury to a Vulnerable Elder or
23 Adult that requires medical treatment or hospitalization. For the purpose of this
24 subsection, "severe physical injury" means brain damage, skull or bone fracture, subdural
25 hematoma, dislocation, sprain, internal injuries, poisoning, burns, scalds, severe cuts, or
26 any other physical injury that seriously impairs the health or physical well-being of a
27 vulnerable Tribal Elder or vulnerable Tribal adult.
28
- 29 4. Law enforcement intervention is necessary for the protection of a Vulnerable
30 Elder or Adult, Department staff, or another person involved in the investigation; or
31
- 32 5. The alleged perpetrator of abuse, neglect or exploitation of a Vulnerable Elder or
33 Adult is not a person responsible for the health or welfare of the Vulnerable Elder or
34 Adult.
35

1
2 **B.** Law Enforcement shall be responsible to determine and investigate if any other criminal
3 acts are alleged and shall forward this information to the Prosecutor.
4
5

6 **SECTION XI. PROSECUTOR'S DUTIES AND RESPONSIBILITIES**
7

8 **A.** The Prosecutor is authorized by this Statute to petition the Court for Emergency
9 Protection Orders and Non- Emergency Protection Order for protection of Vulnerable Elder or
10 Adult from abuse, neglect or exploitation, upon receipt of a report of investigation from the
11 Department.
12
13

14 **B.** The Prosecutor is authorized by this Statute to represent the Tribe in matters of protection
15 of Vulnerable Elder or Adult from abuse, neglect or exploitation, upon request of the
16 Department.
17
18

19 **SECTION XII. PETITIONS AND EMERGENCY ORDERS**
20

21 **A.** Any concerned or interested party may file a Petition for an emergency protection order
22 directly with the court of suspected Vulnerable Elder or Adult abuse, neglect or exploitation.
23

24 **B.** Upon filing of a Petition, the Court may issue an Emergency Protection Order (EPO)
25 authorizing emergency services or protective placement either ex parte or after a hearing, if there
26 is a showing, upon clear and convincing evidence
27

28 **1.** A person is a Vulnerable Elder or Adult and
29

30 **2.** The Vulnerable Elder or Adult is at risk of immediate abuse, neglect or
31 exploitation.
32

33 **C.** The EPO, using the least restrictive alternative, may include:
34

35 **1.** Specific emergency services to be provided to remediate the emergency;

1
2 **2.** Protective placement only if the evidence indicates that it is absolutely necessary;

3
4 **3.** Designation of a person or agency required to implement the order;

5
6 **4.** A warrant for forcible entry by Tribal Law Enforcement, if requested and
7 documented attempts to gain voluntary access have failed.

8
9 **D.** EPOs shall not exceed a maximum of seventy-two (72) hours excluding weekends and
10 holidays, and may only be renewed for an additional seventy-two (72) hours, if there is evidence
11 of continuing emergency.

12
13 **E.** The Court shall hold a hearing upon the filing of a Petition for an EPO or if an EPO was
14 issued ex parte, within seventy two (72) hours. At the hearing, if the Vulnerable Elder or Adult
15 is not represented, a Guardian Ad Litem shall be appointed at this time, if it has not already been
16 done so at the time of the filing of the Petition for an EPO.

17
18 **F.** All parties, including attorneys, are permitted to attend the hearing for an EPO. The
19 hearing may be done ex-parte if the need arises. The sufficiency of the petition will be
20 determined on a totality of circumstances and goes into effect upon the immediate granting of the
21 order by the Court.

22
23
24 **SECTION XIII. PETITIONS AND NON-EMERGENCY PROTECTION ORDER**

25
26 **A.** Upon the filing of a Non- Emergency Protection Order (NEPO) petition, the Court may
27 issue an NEPO, after a hearing that shall be held within fourteen (14) consecutive days if there is
28 a showing, upon clear and convincing evidence

29
30 **1.** A person is a Vulnerable Elder or Adult and

31
32 **2.** The Vulnerable Elder or Adult is at risk of abuse, neglect or exploitation.

1 **B.** All parties are entitled to notice and an opportunity to be heard on the record. All
2 proceedings shall be open to the public, unless the Court, on its own motion or by motion of a
3 party, determines that by the nature of the proceedings, the proceedings are to be closed.
4

5 **C.** Judgments. The Court shall make a written determination or decision within 48 hours of
6 a hearing and using least restrictive alternative, which may include the following:
7

8 1. Appointing a guardian ad litem for the Elder or adult or enter other orders for the
9 protection of the Vulnerable Elder or Adult.
10

11 2. Order the Department to prepare petitions for Guardianship or Conservatorship.
12

13 3. Removal from the place where the abuse or neglect occur(ed) including the
14 Vulnerable Elder or Adult's home;
15

16 4. Remove the abuser from the residence to prohibit further abusive acts;
17

18 5. Requiring any party having a fiduciary duty to the Vulnerable Elder or Adult to
19 account for the Vulnerable Elder or Adult's funds and/or property;
20

21 **D.** Protective orders authority shall not exceed 180 days.
22
23

24 **SECTION XIV. EMERGENCY PLACEMENT** 25

26 **A.** If there is good cause to believe that an emergency exists and a Vulnerable Elder or Adult
27 is at risk of immediate or irreparable harm upon personal observation, the Department or Tribal
28 Law Enforcement shall immediately take steps to protect the Vulnerable Elder or Adult,
29 including emergency services or protective placement. A court order must be obtained within
30 twenty-four (24) hours to continue the authorization of emergency services or protective
31 placement.
32

33 **B.** Anyone who acts in reasonable good faith pursuant to this section shall be immune from
34 civil and criminal suit if the suspected abuse or neglect results in an unsubstantiated report.
35

1
2 **SECTION XV. CONFIDENTIALITY OF REPORTER and RECORDS**

3
4 **A.** The identity of the reporter of suspected Vulnerable Elder or Adult abuse, neglect or
5 exploitation, under this Statute, is confidential.

6
7 **B.** Records of investigations concerning suspected Vulnerable Elder or Adult abuse, neglect
8 or exploitation shall be confidential.

9
10
11
12 **SECTION XVI. RIGHTS OF VULNERABLE ELDER OR ADULT**

13
14 **A.** A Vulnerable Elder or Adult shall be informed of any investigation as it begins, unless an
15 emergency exists and shall have the ability to receive any investigation reports.

16
17 **B.** Elders or adults are presumed to be competent until a court of competent jurisdiction
18 determines otherwise.

19
20 **C.** A Vulnerable Elder or Adult may refuse to allow investigators into their home without a
21 warrant for entry.

22
23 **D.** The Vulnerable Elder or Adult has the right to attend all proceedings pertaining to the
24 suspected abuse, neglect or exploitation unless the Court determines the Elders or adult's health
25 is at risk in attending such proceedings.

26
27 **E.** The Vulnerable Elder or Adult has the right to receive any documents presented to the
28 court at any or all court proceedings pertaining to the suspected abuse, neglect or exploitation.

29
30 **F.** The Vulnerable Elder or Adult has the right to independent medical, psychological or
31 psychiatric evaluations at their own expense.

32
33
34 **SECTION XVII. SAVING CLAUSE**

1 In the event that any phrase, provision, part, paragraph, subsection or section of this statute is
2 found by a court of competent jurisdiction to violate the Constitution, laws, ordinances or
3 statutes of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part,
4 paragraph, subsection or section shall be considered to stand alone and to be deleted from this
5 statute, the entirety of the balance of the statute to remain in full and binding force and effect.
6
7

8 **SECTION XVIII. EFFECTIVE DATE**

9

10 Effective upon signature of the Executive or 30 days from Tribal Council approval whichever
11 comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the
12 veto.
13

14 **CERTIFICATION**

15